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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Alpha Q, Inc.--Entitlement to Costs
File: B-248706.4
Date: July 27, 1993

Richard A. Degen, Esq., for the protester.
Robert L. Mercadante, Esq., Defense Logistics Agency, for
the agency.
Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Protester is not entitled to protest costs where, although
agency took corrective action, protest was not clearly
meritorious.

DECISION

Alpha Q, Inc. requests that our Office declare it entitled
to recover the costs of filing and pursuing its protest
challenging the terms of amendment No. 0003 to request for
proposals (RFP) No. DLA500-92-R-0130, issued by the Defense
Logistics Agency (DLA). Alpha Q contends that DLA unduly
delayed taking corrective action in response to the protest.

We deny the request.

The protest, filed on December 24, 1992, alleged that
amendment No. 0003 contained the same defect for which our
Office sustained an earlier protest, Alpha Q, Inc.,
B-248706, Sept. 18, 1992, 92-2 CPD ¶ 189, involving the same
RFP. We sustained that protest because the RFP improperly
required that offerors comply with the "latest" revision of
the original equipment manufacturer's drawings, without
identifying the drawing revision that would govern the
procurement.¹ Our decision explained that, without a
specific revision being identified in the RFP, offerors

¹The items being solicited are inner balance seals for
turbine engines manufactured by General Electric.

might not be competing on an equal basis. We therefore recommended that DLA amend the RFP to identify the applicable revision of the manufacturer's drawing.

Three months after that decision was issued, DLA issued amendment No. 0003, which explicitly identified revision "R" as the version of the manufacturer's drawing which would govern the procurement. Alpha Q's December 24, 1992, protest followed, alleging that the agency, by not identifying the date of revision "R" in amendment No. 0003, had failed to implement our prior decision.

DLA advised our Office on February 8 that it intended to amend the RFP to add the date of revision "R," thus taking the corrective action requested by the protester. Upon receipt of this notice from DLA, our Office dismissed the protest as academic.

Alpha Q contends that it is entitled to recover the costs of filing and pursuing the protest under Section 21.6(e) of our Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1993). Under that provision, we may declare a protester entitled to costs, including reasonable attorneys' fees, where, based on the circumstances of the case, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Oklahoma Indian Corp.--Claim for Costs, 70 Comp. Gen. 558 (1991), 91-1 CPD ¶ 558. The predicate of our declaring a protester entitled to costs where the agency has granted the relief requested is a finding that the protest was clearly meritorious. ManTech Field Eng'g Corp.--Recon., B-246152.5, Dec. 17, 1992, 92-2 CPD ¶ 422. There is no basis for such a finding here.

It is true, as Alpha Q contends, that our prior decision recommended that the agency amend the RFP to identify the applicable revision, including its date. However, the decision made clear that the purpose of identifying the revision was to ensure that offerors were competing on a common basis. As we noted in the decision, a solicitation stating only that the evaluation would be based on the "latest" revision could result in offerors obtaining inconsistent information concerning which revision was the latest one, since they might seek it from various sources at different times. Consequently, one offeror might base its proposal on revision "P," believing it to be the latest one, while another offeror learned of the issuance of revision "R" shortly before proposals were due and was able to base its proposal on that later revision.

In our decision, we did not find that advising offerors of the revision level (e.g., "R") without the date was inadequate for the purpose of identifying the applicable revision, and Alpha Q did not allege during the prior

protest that, if the revision level were disclosed, the revision date also needed to be disclosed in order to ensure an equal competition in this regard. Alpha Q's December 24 protest simply presumed that providing the revision level but not its date would leave offerors unable to identify with certainty which revision would govern the procurement. Our prior decision did not reach that conclusion, and nothing in the record supports such a finding.² Since we have no basis to find that Alpha Q's December 24's protest was clearly meritorious, award of costs is not justified.

The request is denied.



for James F. Hinchman
General Counsel

²Indeed, it would appear that identifying the revision level without the date is sufficient to ensure an equal competition in this regard. That is, offerors would not need to fear that this element of the competition--the applicable revision--would change without their knowledge, as it might if the governing version were simply the "latest" revision, as in the prior protest.